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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,566	10/17/2003	Hideo Tobata	50195-396	8962
7590 11/02/2004 McDERMOTT, WILL & EMERY 600 13th Street, N.W. Washington, DC 20005-3096			EXAMINER MARTIR, LILYBETT	
			ART UNIT 2855	PAPER NUMBER

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/686,566

Applicant(s)

TOBATA, HIDEO

Examiner

Lilybett Martir

Art Unit

2855

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>10/17/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Fujii (Pat. 6,374,168).

- With respect to claims 1 and 11, Fujii teaches a webbing 1 (seat belt) for restraining a passenger seated on a seat; a retractor 2 for winding and rewinding the webbing; a first pretensioner (Col. 4, lines 42-47) for winding the webbing to the retractor by a first tension; a second pretensioner (Col. 4, lines 49-54) for applying a second tension to the webbing in an emergency about the vehicle to restrain the passenger; a manipulated brake detecting unit (Col. 8, lines 50-51, 58-67 and Col. 9, lines 1-21) for detecting a manipulated amount of a brake pedal of the vehicle; an obstacle detecting unit 12 (Col. 5, lines 13-18) for detecting an obstacle in front of the vehicle; and a control unit 3 for controlling the first tension by the first pretensioner in accordance with at least one of a tension control based on detection data by the manipulated brake detecting unit and another tension control based on detection data by the obstacle detecting unit, wherein the control unit, under the tension control based on detection data by the manipulated brake

detecting unit, allows the first pretensioner to always operate when it is judged that the vehicle is braking in an emergency, and the control unit, under the tension control based on detection data by the obstacle detecting unit, allows the first pretensioner to operate selectively (Col. 8, lines 58-67 and Col. 9, lines 1-39).

- With respect to claims 2-10, Fujii teaches the provision and utilization of a control unit 3 that is capable of being adapted to prohibit the tension control 3 based on detection data by the obstacle detecting unit 12 for a predetermined period when a driver's driving manipulation is detected, capable of being adapted to detect a driver's braking operation (Col. 8, lines 47-63) and prohibit the tension control based on detection data by the obstacle detecting unit for a predetermined period when the driver's braking operation is detected, capable of being adapted to detect a driver's braking operation (Col. 8, lines 47-63) and prohibit the tension control based on detection data by the obstacle detecting unit 12 for a predetermined period when a canceling of the driver's braking operation is detected, capable of being adapted to detect a driver's braking operation (Col. 8, lines 47-63) and prohibit the tension control based on detection data by the obstacle detecting unit 12 while a brake pedal is being manipulated by the driver, capable of being adapted to detect a driver's accelerating operation (Col. 8-9, lines 64-21) and prohibit the tension control based on detection data by the obstacle detecting unit 12 for a predetermined period when an accelerator pedal is manipulated by the driver,

capable of being adapted to detect a driver's manipulating of a steering wheel (Col. 8, lines 46-57) and prohibit the tension control based on detection data by the obstacle detecting unit 12 for a predetermined period when the steering wheel is manipulated by the driver, capable of being adapted to detect a driver's manipulating of a winker (Col. 3, lines 50-64) and prohibit the tension control based on detection data by the obstacle detecting unit 12 for a predetermined period when the winker is manipulated by the driver, capable of being adapted to detect a driver's manipulating of a gear-shift lever (Col. 14-15, lines 60-11) and prohibit the tension control based on detection data by the obstacle detecting unit 12 for a predetermined period when the gear-shift lever is manipulated by the driver, and capable of being adapted to detect a driver's manipulating of a clutch and prohibit the tension control based on detection data by the obstacle detecting unit 12 for a predetermined period when the clutch is manipulated by the driver, since it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham*, 2 USPQ F.2d 1647 (1987), and the CPU 4 and tension controller 3 are perfectly capable of being programmed to perform the desired task without departing from the scope of the claimed invention.

- With respect to claim 12, Fujii teaches: preparing a webbing 1 (Seat belt) for restraining a passenger seated on a seat; detecting a manipulated amount of

a brake pedal of the vehicle (Col. 8, lines 43-63); detecting an obstacle in front of the vehicle (Col. 5, lines 13-18); applying a first tension to the webbing under the tension control based on detection data of the manipulated amount of the brake pedal always when it is judged that the vehicle is braking in an emergency (Col. 9, lines 7-11); applying another first tension to the webbing under the tension control based on detection data of the obstacle selectively (Col. 5, lines 19-40); and applying a second tension to the webbing in an emergency about the vehicle to restrain the passenger (Col. 7, lines 25-39).

Citation of Prior Art

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art considered pertinent during examination of the examined application is:

- Maekawa et al. (Pat. 5,765,774) Seat belt retractor employing ultrasonic motor.
- Vianno et al. (Pat. 6,722,698) Seat belt retractor system.
- Browne et al. (Pat. 6,658,336). Method and system of cooperative collision mitigation.


Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lilybett Martir whose telephone number is (571)272-2182. The examiner can normally be reached on 9:00 AM to 5:30 PM.

Art Unit: 2855

5. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Lefkowitz can be reached on (571)272-2180. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

6. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Lilybett Martir
Examiner
Art Unit 2855

RCM


EDWARD LEFKOWITZ
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